IN THE

Supreme Court of the United States

No. 70-5030

MARGARET PAPACHRISTOU, *et al*,
Petitioners,

v.

CITY OF JACKSONVILLE

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

REPLY BRIEF

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Petitioners file the following reply to the brief for the City of Jacksonville.

POINT ONE

The City is reraising a contention treated by both parties in connection with the petition for certiorari and apparently disposed of by the Court's grant of certiorari.

In any event, the City's contention is only a legal quibble. It makes no real difference whether the District Court of Appeal or the Circuit Court was the "highest" Florida court in which a decision could be had. A final determination was made in both of those courts. The time for seeking a writ directed to either Florida court did not begin to run until the denial of certiorari by the District Court of Appeal. *American Railway Express Co. v. Levee*, 263 U.S. 19 (1923); *Smith v. Illinois*, 390 U.S. 129 (1968) (*sub silentio*). At the time certiorari was granted, each Florida court had "the record", since under Florida procedure each court proceeded upon a certified transcript of the Municipal Court record, with the original record remaining in the Municipal Court. The record now before this Court pursuant to the grant of certiorari fully covers the proceedings in all the Florida courts. (App. 3-43).

If the Circuit Court is the "highest court . . . in which a decision could be had" for purposes of 28 U.S.C. 1257—which is arguably true—the short answer will be for this Court to direct its review to the decision of the Circuit Court.

In no way is this case subject to dismissal because of misdirection of the writ as contended by the City. In actuality no writ has technically issued, which points up the inappropriateness of the City's claim. Even if a writ had issued, the remedy would be amendment not dismissal. See *Antherton v. Fowler*, 91 U.S. 143 (1875); *Department of Banking v. Pink*, 317 U.S. 264, 267 (1942) (*dictum*); Robertson and Kirkham, JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES (Wolfson & Kurland ed. 1951), § 426 at pp. 849-857.

POINT TWO

The City's second contention is inconsistent with its first. If this Court's review should be of the Circuit Court's judgment, the existence of an adequate State ground for the District Court of Appeal's decision would be irrelevant. It

cannot be contended in any way that the Circuit Court's judgment was based on an adequate state ground (App. 19).

In any event, there is no adequate State ground for the Court of Appeal's ruling. Although the Court of Appeal's decision was two-pronged, both prongs rested ultimately on the constitutional validity of the vagrancy legislation. The first prong adopted the decision of the Florida Supreme Court in *Johnson v. State*, 202 So. 2d 852 (Fla. 1967), upholding the Florida vagrancy statute. (App. 39).

For its second prong, the Court of Appeal ruled that the decision of the Circuit Court was not in excess of that court's jurisdiction and "did not depart from the essential requirements of the law." "Essential requirements of the law" under Florida law means considerably more than procedural regularity. It covers virtually anything involving "serious injury or injustice" or violations of "fundamental" rights. See e.g. *Haile v. Gardner*, 91 So. 376 (Fla. 1921); see also 5 FLORIDA JURISPRUDENCE, *Certiorari* § 31 for collected cases.

At the least, the decision of the District Court of Appeal was an exercise of discretion not to disturb a lower court interpretation of the Federal Constitution, which is hardly an adequate ground for insulating State court decisions from Federal review.

POINTS THREE AND FOUR

The City's third and fourth points are based on a faulty premise. The City contends that each of the petitioners was charged with only one portion of the challenged legislation. This is not so.

Petitioners were tried and convicted on a general charge of vagrancy. As pointed out on Page 11 of the petitioners' principal brief, the docket sheet language cited by the City for limiting the charge against each defendant to a specific portion of the underlying legislation was only descriptive language which did not legally limit the charge.

It is difficult to support the above statement with explicit authority since there are no formal rules of procedure or pleading for Florida's municipal courts and no published decisional law on point. Inferential support is found in various respects in the instant record. Of the cases here, only in the Jimmy Lee Smith case (vagrancy—vagabonds) was the docket's descriptive language in terms of the underlying legislation. The descriptive language of the Papachristou charge (vagrancy—prowling by auto) and the Brown charge (vagrancy—disorderly loitering on street) had no basis in either the ordinance or the statute. The Heath and Campbell charge (vagrancy—common thief) had at best uncertain basis in the legislation. Yet a motion to dismiss was denied in each case. Further, except for the Campbell case, the record shows little effort by the Court or the City's witnesses either to direct the City's evidence at or confine it to the descriptive language.

Whatever else may be true, it is clear that only in the Smith case can the City cite a specific sub-part of the legislation as the basis for conviction.

In the absence of some showing that they were convicted under a specific sub-part, the other petitioners maintain that the unconstitutionality of any sub-part of the legislation will invalidate their convictions, and they have accordingly attacked the legislation as a whole. This Court has many times ruled that a conviction on a general charge is unconstitutional if any part of the underlying statute or ordinance is unconstitutional. See *Bachellar v. Maryland*, 397 U.S. 564 (1970); *Street v. New York*, 394 U.S. 576 (1969); *Thomas v. Collins*, 323 U.S. 516 (1945); *Williams v. North Carolina*, 377 U.S. 287 (1942); and *Stromberg v. California*, 283 U.S. 359 (1931).

Apart from that, petitioners are hopeful that the Court will consider their general attack on the legislation for another reason. While in the ordinary case constitutional rulings should be no broader than necessary, vagrancy legislation presents unique considerations.

Vagrancy legislation is unparalleled in breadth. As pointed out by the City, the Jacksonville vagrancy ordinance contains at least eighteen separate and distinct elements. The Florida courts have made it abundantly clear that no part of the legislation will be ruled unconstitutional at any level of the Florida judicial system. As manifested by the Florida Supreme Court's resentful and grudging acceptance (*Johnson v. State*, 216 So.2d 7 (Fla. 1968)) of this Court's mandate in *Johnson v. Florida*, 391 U.S. 596 (1968), the Florida courts will do no more about vagrancy than this Court expressly requires. Meanwhile, Florida law enforcement officers continue to make heavy use of vagrancy: in the first ten months of 1971 the Jacksonville police alone have made 986 vagrancy arrests.[1]

Under this unusual combination of factors, only a declaration that the entire legislation is unconstitutional can prevent the daily flagrant abuse being wrought under it. A point-by-point attack would be most unsatisfactory. It has taken nearly three years for the cases at hand to reach their present posture. There is no reason to believe that new attacks could be moved more quickly. Nor is this Court in a position to entertain eighteen separate vagrancy cases. More important, having regard for the people upon whom the brunt of vagrancy enforcement falls, there is no way to estimate how much abuse will be acquiesced in while a point-by-point attack is carried out.

Vagrancy has troubled this Court for years, but the Court has always restrained itself.[2] Petitioners hope that the

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[1]This figure was provided by the Office of the Sheriff for the City of Jacksonville.

[2]*Edwards v. California*, 314 U.S. 160 (1941); *Hicks v. District of Columbia*, 383 U.S. 252 (1966); and *Johnson v. Florida*, 391 U.S. 596 (1968).

Court's patience is now at an end and that it will here issue a declaration putting vagrancy to rest.

Respectfully submitted,

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